



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)  
Approved for use through xx/xx/200x. OMB 0651-00xx  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)  
1001-0242

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  
on 5/22/07  
Signature Mark Zagorin  
Typed or printed name Mark Zagorin

Application Number 10/757,273	Filed January 14, 2004
First Named Inventor Richard A. Hamersley	
Art Unit 2116	Examiner Paul B. Yanchus III

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).  
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.      36,067  
Registration number \_\_\_\_\_

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Mark Zagorin  
Signature  
Mark Zagorin  
Typed or printed name  
512-338-6300  
Telephone number  
5/22/07  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Richard Alan Hamersley

Title: PROCESSING OF PROCESSOR PERFORMANCE STATE  
INFORMATION

Application No.: 10/757,273 Filed: January 14, 2004

Examiner: Paul B. Yanchus III Group Art Unit: 2116

Atty. Docket No.: 1001-0242 Confirmation No.: 4547

May 22, 2007

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**

This paper is being submitted concurrently with a Notice of Appeal in compliance with 37 C.F.R. § 41.31 and a Pre-Appeal Brief Request for Review.

Any fees required by this paper are being provided as directed in an electronic submission of this paper or in a transmittal letter accompanying this paper. However, the Commissioner is hereby authorized to charge any deficiency in fees required by this paper and any additional fees under 37 C.F.R. § 1.16 or 1.17 which may be required during the pendency of this application, and to similarly credit any overpayment, to Deposit Account 50-0631.

REMARKS

This paper is being submitted concurrently with a Notice of Appeal in compliance with 37 C.F.R. § 41.31 and a completed form PTO/SB/33.

Claims 7, 12-17, 26-29, and 32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2003/0120961 to Cooper (hereinafter, "Cooper"). Claims 1-5, 8-11, 19-25, and 31 are indicated as allowed.

Applicant respectfully traverses the rejections of claims 7, 12-17, 26-29, and 32 because Cooper does not teach each and every limitation of those claims that stand rejected under 35 U.S.C. § 102(e). See Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1565, 24 USPQ2d (BNA) 1321, 1326 (Fed. Cir. 1992) (each element of the claim must be found in a single prior art reference).

Claim 7

In particular, regarding claim 7, Applicant respectfully maintains that Cooper fails to teach *generating performance state data if none of the performance state data is associated with the processor being utilized in the computer system and a near match does not exist*. In Cooper either the performance state data matches, or default performance data is used. Nor does Cooper teach a *near match*. See Response to Final Office Action filed March 9, 2007, page 9, line 11 to page 10, line 3.

Claim 12

Similar to language in claim 7, claim 12 recites *generating performance state data if none of the performance state data is associated with the processor being utilized in the computer system*, which is not taught by Cooper. See Response to Final Office Action filed March 9, 2007, page 10, lines 4-8.

Claim 13

Claim 13 recites *generating performance state data . . . after determining that a near match does not exist*. Cooper does not contemplate near matches. See paragraph 1040 of the

instant specification for a description of a near match. See also Response to Final Office Action filed March 9, 2007, page 10, lines 9-11.

Claim 14

Claim 14 recites that generating the performance state data further comprises *generating performance state information including a plurality of frequency values and a fixed voltage value*, which is not taught by Cooper. See Response to Final Office Action filed March 9, 2007, page 10, lines 12-17.

Claim 16

Claim 16 recites that *the plurality of frequency values* (that were generated) are spread approximately evenly between a lower limit and the upper limit, which is not taught by Cooper. See Response to Final Office Action filed March 9, 2007, page 10, lines 18-25.

Claims 17, 26, 32

Claims 17, 26, and 32 are patentable over Cooper for similar reasons as described for claim 7. See Response to Final Office Action filed March 9, 2007, page 10, lines 26 to page 11, line 13.

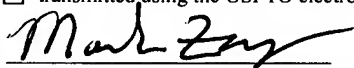
Summary

For at least the reasons pointed out above, applicant believes that claims 7, 12, 13, 14, 16, 17, 26, and 32 (and any claims dependent thereon) distinguish over Cooper and respectfully requests a pre-appeal brief review.

**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that, on the date shown below, this correspondence is being

- ☒ deposited with the US Postal Service with sufficient postage as first class mail in an envelope addressed as shown above.
- ☐ facsimile transmitted to the USPTO.
- ☐ transmitted using the USPTO electronic filing system.

  
Mark Zagorin

5/22/07  
Date

**EXPRESS MAIL LABEL:** \_\_\_\_\_

Respectfully submitted,



Mark Zagorin, Reg. No. 36,067  
Attorney for Applicant(s)  
(512) 338-6311 (direct)  
(512) 338-6300 (main)  
(512) 338-6301 (fax)